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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(Nevada)

JONATHAN GOLDSMITH et al.,

Plaintiffs and Respondents,

v.

EDWARD J. CALDWELL et al.,

Defendants and Appellants.

C059420 & C060427

(Super. Ct. No. 68346)

This case involves appeals from an order after judgment awarding attorney fees to the plaintiffs and from the judgment underlying the order. The judgment declares that the appellants had breached a covenant of good faith and fair dealing when they failed to consider a request for an expanded easement pursuant to a Road Maintenance Agreement. The parties argue the validity of the judgment as a declaratory judgment but do not directly argue the merits of the attorney fee award. However, the validity of the judgment is central to the validity of the attorney fee award, as shown by the provisions of the statute governing the award of the fees, Civil Code section 1717.

Civil Code section 1717 authorizes an award of attorney fees to the prevailing party in a contract action, defined as the party who "recovered a greater relief in the action on the contract." We will conclude that since the plaintiffs recovered no valid declaratory relief in the action and are barred from the status of prevailing party by subdivision (b)(1), they are not entitled to attorney fees.

This is a dispute among neighbors and former neighbors in a subdivision in a rural area of Nevada County served by a road over which the property owners in the subdivision have easements for ingress and egress. A Road Maintenance Agreement (Agreement) among the property owners specifies the easement rights of the property owners, permits an owner to request an expanded easement to serve a new parcel, and requires that the request be considered by the parties to the Agreement. The granting of a request requires the consent of all the property owners, parties to the Agreement.

Plaintiffs Jonathan and Margo Goldsmith subdivided their property and requested an expanded easement to serve the new parcel but their request was denied. Thereafter they initiated this action naming as defendants all of the property owners in the subdivision at the time of the denial, including the appellants, claiming the denial of their request breached the implied covenant of good faith and fair dealing implicit in the Agreement. They sought damages or an injunction compelling the defendants to grant the easement.

The trial court found a breach of the covenant of good faith and fair dealing and directed that the defendants award plaintiffs an easement. The injunction did not apply to the appellants because, prior to the filing of the complaint, they sold their property in the subdivision and could not consent to the granting of an easement.

In *Goldsmith v. Vierra* (Mar. 2, 2006, C047895) [nonpub. opn.] (*Goldsmith I*), we concluded the trial court correctly found the Agreement contains an implied covenant of good faith and fair dealing. We also concluded the trial court exceeded its authority in awarding plaintiffs an easement as a remedy for breach of the covenant. We reversed the judgment and remanded the case with directions that the trial court enter a new judgment limited to an order to conduct a fair hearing on the easement request.

In the meantime the defendants, other than appellants, settled the case in exchange for an expanded easement and were dismissed from the case. Notwithstanding, the trial court entered a new judgment declaring that the appellants had violated the fair hearing requirement and imposed on them attorney fees incurred by the plaintiffs in the trial of the case.

The appeals are from the judgment and the order after judgment imposing the attorney fees. (Code Civ. Procedure, §§ 904.1, subd. (a)(1) & 904.1, subd. (a)(2).) We will reverse the judgment and order after judgment.

FACTS

The appellants and defendants below were parties to an Agreement that provides for easements over Sky Pines Ridge Road to access properties in a rural subdivision in Nevada County. The Agreement provides that its provisions shall be "treated as covenants running with the land and shall bind the heirs, successors, assigns and legal representatives" of the parties to the Agreement. In relevant part, it provides a procedure for obtaining an expanded easement: "This Agreement shall not prevent any party to the [Agreement] from requesting of the other parties of the Agreement, the right to service . . . parcels which may be created by future subdivisions of that parties' property to which this easement is appurtenant. The other parties . . . shall consider any and all requests . . . on a case-by-case basis. All parties acknowledge any future expansion of the easement to serve additional parcels or to increase the burden caused by an existing parcel shall require consent of all parties to this Agreement"

The plaintiffs requested an expanded easement to service a subdivided parcel. Ten parties to the Agreement, representing 11 properties, attended a meeting at which the request was denied. Thereafter the appellants sold their property. A complaint was then filed against the appellants and the defendants below in October 2002 and amended in August 2003 claiming breach of contract and breach of the covenant of good faith and fair dealing. The action sought damages, quiet title to an additional easement, and a mandatory injunction requiring

the defendants to grant the easement. Nineteen of the defendants appeared, filed their answers, settled with the plaintiffs and were dismissed from the action prior to trial.

Following a bench trial in May 2004, the trial court concluded the Agreement contains an implied covenant of good faith and fair dealing that defendants breached when they rejected the plaintiffs' request. The court entered judgment in July 2004 directing the defendants to grant the requested easement to plaintiffs but rejecting a separate claim that the road had become public. A post judgment order awarding attorney fees to plaintiffs was entered in October 2004. Defendants appealed the judgment and order in September 2004. Plaintiffs cross-appealed in October 2004.

While the case was pending on appeal, five of the remaining defendants entered settlement agreements with the plaintiffs and were dismissed from the action. In March 2006 we rendered a decision finding a breach of the covenant of good faith and fair dealing but rejecting the plaintiffs' claim that the road had become dedicated to the public. However, we rejected the order directing the granting of an easement, reversed the judgment and post judgment order award of attorney fees, ordered that a new judgment be entered directing compliance with the covenant of good faith and fair dealing and directed reconsideration of the determination of prevailing party. The remittitur was issued in May 2006.

In January 2007 the trial court issued an order in compliance with our directives. Following that, the parties to

of the Agreement entitled to vote on the easement granted the easement and entered into settlement agreements with the plaintiffs.¹ Dismissals were then entered for the remaining defendants in the action other than appellants. In its January order the trial court fashioned a procedure by which to retry the case on the issue of good faith and fair dealing. However, the court said "[t]rial was not necessary because all defendants except the [appellants] settled by granting the easement and those settling defendants were dismissed from the case." The court further said that "[t]he [appellants], while still parties in this action, were not able to vote and could not have settled the remaining issues between them and plaintiffs by agreeing to the easement."

Nonetheless, the court directed the entry of a new judgment proposed by the plaintiffs' counsel. It provided: "In considering a request by a homeowner to grant an additional easement over Sky Pines Ridge Road, the members of the road association, in exercising their discretionary power, shall act reasonably and fairly and may only reject a request for a reason rationally related to the protection, preservation and proper operation of the property and purposes of the association." It then directed a finding that appellants "breached the covenant

¹ Although it does not directly appear from the record, because the granting of an easement required the consent of all of the property owners in the subdivision it necessarily included the successors in interest to appellants, who sold their property prior to the filing of the complaint.

of good faith and fair dealing when they considered plaintiffs request for the easement."

The court said: "The *only basis* for awarding a judgment against the remaining defendants [the appellants] in favor of plaintiffs under the court of appeal opinion is the *declaration* that the covenant of good faith and fair dealing was part of the agreement and that it was breached." (Italics added.)

On the sole basis of that declaration the trial court granted the "plaintiffs' motion for a determination that they are the prevailing parties and for attorney's fees" The court did not, because it could not, grant any relief, because the easement was obtained by way of a settlement with and dismissal of the defendants, other than the appellants, from the action.

DISCUSSION

This is a Civil Code section 1717 case. It applies "[i]n any action on a contract, where the contract specifically provides that attorney fees and costs, which are incurred to enforce that contract, shall be awarded either to one of the parties or to the prevailing party" (Civ. Code, § 1717, subd. (a).) The section governs the award of attorney fees in actions on contracts containing attorney fee provisions, including contracts which contain conflicting provisions. (*Santisas v. Goodin* (1998) 17 Cal.4th 599, 616-617.)

An attorney fee may be awarded only to the prevailing party, defined as "the party who recovered a greater relief in the action on the contract." (Civ. Code, § 1717, subd. (b)(1).)

Moreover, "[w]here an action has been . . . dismissed pursuant to a settlement of the case, there shall be no prevailing party" (Civ. Code, § 1717, subd. (b)(2).) All of these provisions bear on the resolution of this case.

The Agreement contains an attorney fee clause. "Declarant and each person to whose benefit this declaration inures, may proceed at law or in equity to prevent the occurrence, continuation or violation of any provision of this declaration [the Agreement], and the court in such action may award the successful party reasonable expenses in prosecuting such action including attorney fees." This provision applies only to prospective relief, i.e., relief that "prevent[s]" the violation or continued violation of the Agreement. The appellants were never subject to this provision since they were not property owners in the subdivision from the inception of the plaintiffs' action, hence could not be prevented from continuing to violate the contract. On this basis alone the plaintiffs could have been denied attorney fees.

However, this issue was not raised below and we will not rely on the attorney fee provision in this opinion. Rather, the appellants did tender an issue which goes to the heart of Civil Code section 1717, whether the plaintiffs recovered declaratory relief in the action.

The appellants claim that the trial court improperly "entered a 'declaratory relief' judgment against [them] stating simply that they had breached the covenant of good faith and fair dealing" They argued: "The trial court entered

this judgment notwithstanding that: 1) the [appellants] could no longer consider the [plaintiffs'] request for an easement as they no longer owned the property or were parties to the Road Maintenance Agreement; 2) they had been expressly excluded from the [plaintiffs'] declaratory relief cause of action for that reason; and 3) the [appellants] were also no longer parties to the Road Maintenance Agreement."

The plaintiffs responded that the trial court properly awarded declaratory relief. However, it is not responsive to the appellants' implied claim that declaratory relief is appropriate only with respect to the future conduct of the parties, and, since the appellants were no longer property owners or parties to the Agreement and could not participate in reviewing a request for an expanded easement, they were not subject to declaratory relief. We agree.

"'Declaratory relief operates prospectively, serving to set controversies at rest. If there is a controversy which calls for a declaration of rights, it is no objection that past wrongs are also to be redressed; but there is no basis for declaratory relief where only past wrongs are involved. Hence where there is an accrued cause of action for an actual breach of contract or other wrongful act, declaratory relief may be denied.

[Citations omitted.]' (3 Witkin, Cal. Procedure (2d ed. 1971) (Pleading, § 722, pp. 2342-2343.))" (*Baldwin v. Marina City Properties, Inc.* (1978) 79 Cal.App.3d 393,407.)

The issue of declaratory relief is but the predicate for the larger issue whether the plaintiffs obtained any relief in

the action. As noted, Civil Code section 1717 applies only to the "party who is determined to be the party prevailing on the contract" (Civ. Code, § 1717, subd. (a).) The prevailing party is defined as "the party who recovered a greater relief in the action on the contract." (Civ. Code, § 1717, subd. (b)(1).)

The term "relief" is qualified by the phrase "in the action." In the context of this case, it refers to the kinds of relief that can be recovered by a plaintiff in a breach of contract action. In general the forms of relief are the award of a sum of money due or for unjust enrichment or damages, specific performance of the terms of the contract, restoration of a specific thing, or declaring the rights of the parties. (Rest. 2d Contracts, § 345.) A declaratory relief action is dependent upon the law of the state. (*Id.* at com. d.)

As noted, declaratory relief was not properly awarded plaintiffs nor were damages, specific performance or any other recognized relief that may be granted plaintiffs. Rather, the question arises whether there is a larger meaning for the term relief, based upon dicta in *Hsu v. Abbata* (1995) 9 Cal.4th 863 that the trial court "is to compare the relief awarded on the contract claim or claims with the parties' demands on those same claims and their litigation objectives as disclosed by the pleadings, trial briefs, opening statements, and similar sources." (*Id.* at p. 876.)

The issue is whether the plaintiffs obtained their litigation objective, an easement, and that counts as relief

under Civil Code section 1717, subdivision (b)(1). However, the easement was not obtained "in the action;" it was obtained in a settlement with the parties who remained as property owners. However, under Civil Code section 1717, subdivision (b)(2) "[w]here an action has been . . . dismissed pursuant to a settlement of the case, there shall be no prevailing party" ²

Moreover, in the provision quoted from *Hsu*, the court was not defining but presupposing relief. It was addressing whether a party obtained the greater relief in a contract action. "The prevailing party determination is to be made only upon final resolution of the contract claims and only by 'a comparison of the extent to which each party ha[s] succeeded and failed to succeed in its contentions.'" (*Hsu*, *supra*, 9 Cal.4th at p. 876.) Moreover, *Hsu* did not address the relief to be accorded a plaintiff. It concerned "a simple, unqualified victory [for the defendant] by defeating the only contract claim in the action" (*Id.* at p. 877.) Thus, in *Hsu* the term "litigation objectives" is not an independent measure of the

² The settlement granting an expanded easement to plaintiffs also had the effect of discharging the obligation imposed on the parties to the Agreement to provide a fair hearing on the plaintiffs' request for the easement. (Civ. Code, § 1474.)

Section 1474 provides in full: "Performance of an obligation, by one of several persons who are jointly liable under it, extinguishes the liability of all."

term "relief" in Civil Code section 1717, subdivision (b)(1) since it comes into play only "to *compare* the relief awarded . . . with the parties' demands . . . and their litigation objectives" (*Id.* at p. 876, italics added.)

The simple fact of this case is that no relief whatever was "recovered [by the plaintiffs] in the action on the contract." (Civ. Code, § 1717, subd. (b)(1).) Nor could relief have been recovered pursuant to a settlement and dismissal of the parties under Civil Code section 1717, subdivision (b)(2.)

DISPOSITION

The judgment and order after judgment imposing attorney fees on appellants are reversed. The appellants shall recover their costs on appeal.

BLEASE, Acting P. J.

I concur:

RAYE, J.

HULL, J.

I dissent. The majority concludes the trial court erred in entering what is, in effect, a declaratory relief judgment that does not award any affirmative relief to plaintiffs. The majority further concludes that, because no relief was awarded to plaintiffs *in the action*, they cannot be considered the prevailing parties for purposes of an award of attorney fees under Civil Code section 1717. I respectfully disagree with both conclusions.

Plaintiffs successfully proved appellants and others breached the road maintenance agreement when they failed to consider plaintiffs' easement request in good faith. The trial court entered judgment accordingly. The majority concludes the judgment is erroneous because it fails to award any relief against appellants, who were the only remaining defendants at the time of entry of judgment. I disagree. Prior to entry of the final judgment, the trial court entered orders finding a breach of contract and directing the defendants to reconsider plaintiffs' easement request in good faith. Thereafter, those defendants still parties to the road maintenance agreement settled their dispute with plaintiffs by granting the requested easement. The court then entered final judgment reiterating its finding of a breach.

Taken to its logical conclusion, the majority's assessment that the judgment is erroneous means the trial court should instead have entered judgment of dismissal for appellants. In

other words, despite the fact the court concluded, and nobody disputes, that appellants breached the road maintenance agreement, appellants prevailed in the action simply because they sold their property after they breached the agreement.

On the attorney fees order, the majority's basic premise is that, because plaintiffs received no relief "in the action," they cannot be considered the prevailing parties. Again I disagree. Although plaintiffs' ultimate goal was to obtain an easement for their subdivided parcel, and they did not achieve that goal "in the action," they did receive relief by way of an order requiring the defendants to reconsider their request for an easement in good faith. But for that order, it may reasonably be assumed none of the defendants would have settled the case by granting the requested easement.

The majority reaches the remarkable conclusion that a party who sues for breach of contract, succeeds in proving a breach, and obtains a form of relief that ultimately results in achievement of the party's litigation objective is nevertheless not the prevailing party. As I explain in the following sections, this conclusion cannot withstand scrutiny.

I

This is a dispute among neighbors and former neighbors in a rural area of Nevada County served by a road over which the residents have easements for ingress and egress. A road maintenance agreement permits any resident to request additional easements to serve newly-created parcels and requires that such

request be "consider[ed]" by the other residents. It further provides that any new easement requires the consent of all parties to the agreement and the payment of such charges as may be deemed proper.

Plaintiffs subdivided their property and requested an easement to serve the newly-created parcel. Thereafter, they received an unsigned letter indicating their request had been considered by 10 property owners and unanimously denied.

After further attempts to obtain an easement were unavailing, plaintiffs initiated this action, claiming the defendants violated a covenant of good faith and fair dealing implicit in the road maintenance agreement. The trial court agreed and ordered that plaintiffs be granted the requested easement. The court also found plaintiffs to be the prevailing parties and awarded attorney fees. Defendants appealed.

In *Goldsmith v. Vierra* (Mar. 2 2006, C047895) [nonpub opn.] (*Goldsmith I*), we concluded the trial court correctly found the road maintenance agreement contains an implied covenant of good faith, but further concluded the trial court exceeded its authority in awarding plaintiffs an easement as a remedy for breach of the covenant. We directed the court to enter a new judgment consistent with our opinion.

Following remand, the parties litigated the form of a final judgment to be entered by the trial court pursuant to our opinion in *Goldsmith I*. The defendants also moved for dismissal of the action based on the fact plaintiffs had recently sold their property. On January 7, 2007, the trial court entered an

order on the defendants' objections to the proposed judgment and request for dismissal. The court denied the motion to dismiss but concluded a final judgment could not yet be entered. Instead, the court ordered the current owners to reconsider plaintiffs' request in good faith and set forth a specific procedure for doing so.

In the meantime, the remaining defendants, other than appellants, settled with plaintiffs and granted them the requested easement. The trial court thereafter entered final judgment for plaintiffs, finding appellants breached the covenant of good faith in connection with the initial rejection of plaintiffs' easement request. On the parties' cross-motions for attorney fees, the trial court found plaintiffs to be the prevailing parties and awarded them attorney fees in the amount of \$140,729.50.

II

Appellants contend the judgment is defective because it awards declaratory relief under circumstances where there is no present controversy. They argue declaratory relief is unavailable where there is an accrued cause of action for breach of contract rather than a potential or threatened breach. According to appellants, since specific performance had been elected or awarded on the single remaining cause of action for breach of contract and they no longer own property along Sky Pines Ridge Road, there was no relief that could be granted

against them. Hence, they argue, the only thing left to do was dismiss them from the case.

The majority agree the judgment erroneously grants declaratory relief where appellants are no longer property owners subject to the road maintenance agreement.

The majority and appellants misconstrue the nature of the judgment below. That judgment adjudicates a past wrong, not a potential or threatened future wrong. Hence, it is not a declaratory relief judgment.

"Code of Civil Procedure section 1060 authorizes an action for declaratory relief. '[I]n cases of actual controversy relating to the legal rights and duties of the respective parties,' any person may bring an action for a declaration of his or her rights and duties in connection with that controversy. (Code Civ. Proc., § 1060.) 'The declaration may be had before there has been any breach of the obligation in respect to which said declaration is sought.' (*Ibid.*)" (*Taxpayers for Improving Public Safety v. Schwarzenegger* (2009) 172 Cal.App.4th 749, 768.)

Declaratory relief looks to the future rather than adjudicating past breaches. "'Declaratory relief operates prospectively, serving to set controversies at rest. If there is a controversy which calls for a declaration of rights, it is no objection that past wrongs are also to be addressed; but there is no basis for declaratory relief where only past wrongs are involved. Hence, where there is an accrued cause of action for an actual breach of contract or other wrongful act,

declaratory relief may be denied. [Citations omitted.]' (3 Witkin, Cal. Procedure (2d ed. 1971) Pleading, § 722, pp. 2342-2343.)" (*Baldwin v. Marina City Properties, Inc.* (1978) 79 Cal.App.3d 393, 407.)

The present matter involves a past wrong. Appellants and others were involved in the initial decision to deny plaintiffs an easement. However, before suit was filed, appellants sold their property along Sky Pines Ridge Road and, therefore, had no further involvement in the easement decision. But that does not mean the trial court was without power to enter judgment against them. In their first cause of action, plaintiffs alleged appellants and others breached the implied covenant of good faith in the road maintenance agreement and sought damages in the amount of \$400,000. The trial court entered judgment for plaintiffs on this claim, and appellants do not contest this finding. This is a determination of a past wrong, not a declaration of prospective rights. It is no different than any other finding of a past breach in a contract action.

The fact that the court did not also award damages or any other relief against appellants does not convert this into a declaratory relief judgment. Rather, it is a reflection of the fact plaintiffs chose not to pursue an award of damages for the breach, or the trial court precluded them from doing so, and no specific performance could be ordered against appellants. Thus, there is nothing defective in the underlying judgment.

III

Appellants contend the trial court erred in finding plaintiffs to be the prevailing parties, inasmuch as plaintiffs obtained no monetary or other relief from them. Although plaintiffs ultimately prevailed in their quest to obtain an easement, they did not obtain the easement from appellants but from the other defendants and did not obtain the easement by way of a judgment but by virtue of settlement agreements. And, while plaintiffs obtained a judgment finding appellants breached the road maintenance agreement, they were awarded no damages. According to appellants, it was unnecessary to sue them unless plaintiffs were seeking damages, and plaintiffs failed to present any evidence of damages, electing instead to pursue specific performance.

In *Foothill Properties v. Lyon/Copley Corona Associates* (1996) 46 Cal.App.4th 1542 (*Foothill*), a case relied upon by appellants, the court found the defendant breached the applicable contract but nevertheless concluded the defendant was the prevailing party because the plaintiff suffered no damages thereby. (*Id.* at p. 1555.) But in that case, the plaintiff's victory on the contract claim "was, at most, pyrrhic," inasmuch as the claim was never seriously contested by the parties. (*Ibid.*)

In the present matter, the parties hotly contested whether appellants and the other defendants were obligated to consider the easement request in good faith. The trial court concluded

they were and, in *Goldsmith I*, we concurred. Furthermore, on the issue of damages, the record does not support appellants' assertion plaintiffs abandoned such relief in favor of specific performance. As explained in *Goldsmith I*, the record on appeal was incomplete and did not include the entire reporter's transcript. The present record also does not contain a reporter's transcript of any trial in this action.

There is nothing in the record before us to support appellants' assertion that plaintiffs *abandoned* their claim for damages. Instead, it appears the trial court, on its own, determined to award specific performance in lieu of damages.

In *Goldsmith I*, we explained the trial court found for plaintiff on their breach of contract claim but, "[i]n lieu of damages, the court awarded plaintiffs an easement over Sky Pines Ridge Road for the benefit of the new parcel"

(*Goldsmith I*, *supra*, C047895.) Following remand from this court, the trial court entered an order stating: "The court of appeal upheld the trial court's grant of specific performance in lieu of damages." Although the trial court acknowledged we did not affirm the particular specific performance ordered, it suggested that we placed our stamp of approval on awarding some type of specific performance in lieu of damages. Later, in its order finding plaintiffs to be the prevailing parties, the court stated: "When the case was remanded by the court of appeal, this court was directed to enter judgment based on its decision. Plaintiffs' ability to seek damages had been removed because the

court of appeal upheld the specific performance remedy in lieu of damages."

That is incorrect. In the prior appeal, the parties did not raise any issue regarding the trial court's decision to grant specific performance in lieu of damages, except as to the type of specific performance. Therefore, we had no occasion to consider the issue.

In a later ruling, the trial court said: "[Appellants], while still parties in this action, were not able to vote and could not have settled the remaining issues between them and plaintiffs by agreeing to the easement. Under these circumstances, it would be unfair to award damages against them based on the court of appeal's finding of breach of the covenant in the original vote."

That too is incorrect. This court made no finding that appellants breached the covenant of good faith. It was the trial court that made such finding, and the parties did not contest it on appeal. (See *Goldsmith I, supra*, C047895.) Further, the fact appellants were no longer able to vote on the request for an easement and could not have settled with plaintiffs by agreeing to an easement does not preclude an award of damages. To the extent plaintiffs were damaged by the initial vote to deny an easement, plaintiffs could pursue a claim for those damages from appellants.

Hence, unlike *Foothill*, it cannot be said here that the trial court found plaintiffs were not damaged by appellants' breach of contract. Nor can it be said that plaintiffs

abandoned their claim for damages. Rather, that claim appears to have been taken away from plaintiffs by the trial court, either through affirmative action or through its misunderstanding of our prior decision.

At any rate, the question here is whether plaintiffs obtained any relief in the action. As the majority suggests, plaintiffs' ultimate objective was to obtain an easement for their newly created parcel of property. But, as explained in *Goldsmith I*, they could not have obtained that relief in this action. The most plaintiffs could have achieved by way of equitable relief was an order that the defendants reconsider their request in good faith. They obtained such relief. Furthermore, it may reasonably be assumed the order requiring reconsideration of plaintiffs' easement request in good faith was instrumental in plaintiffs achieving their ultimate objective. It was, in effect, a material step toward reaching their ultimate goal of an easement.

Following remand from this court, the trial court did not immediately enter judgment requiring the defendants to reconsider plaintiffs' easement request in good faith. Instead, the parties litigated the form of the judgment to be entered. The defendants also sought dismissal of the action because plaintiffs had sold their property. Appellants never sought dismissal of the action based on the sale of their property and the fact no equitable relief could be obtained against them. On the contrary, they remained in the action and sought an award of attorney fees from plaintiffs. Faced with competing claims for

attorney fees, the court ultimately ruled in favor of plaintiffs.

A trial court has discretion in making prevailing party determinations under Civil Code section 1717. (*Hsu v. Abbata* (1995) 9 Cal.4th 863, 871.) However, "when the results of the litigation on the contract claims are *not* mixed--that is, when the decision on the litigated contract claims is purely good news for one party and bad news for the other--the Courts of Appeal have recognized that a trial court has no discretion to deny attorney fees to the successful litigant." (*Id.* at pp. 875-876.) "[I]n determining litigation success, courts should respect substance rather than form, and to this extent should be guided by 'equitable considerations.' For example, a party who is denied direct relief on a claim may nonetheless be found to be a prevailing party if it is clear that the party has otherwise achieved its main litigation objective." (*Id.* at p. 877, italics omitted.)

It will surely come as a surprise to plaintiffs to learn that, according to the majority, they did not prevail in this action. Plaintiffs claimed the road maintenance agreement contains an implied covenant of good faith and the defendants, including appellants, breached that covenant in denying their request for an easement. Plaintiffs succeeded in proving both. Plaintiffs further obtained an order requiring the defendants to comply with the road maintenance agreement by reconsidering their request in good faith, a material step in achieving their ultimate goal of an easement. Under these circumstances, it

cannot reasonably be said the trial court abused its discretion in finding plaintiffs to be the prevailing parties.

I would affirm the judgment.

HULL